

January 17, 2013

Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12<sup>th</sup> St., S.W.  
Washington, DC 20554

Re: Applications of Deutsche Telekom AG, T-Mobile USA, Inc. and MetroPCS Communications, Inc. for Consent to Transfer of Control of Licenses and Authorizations Held by MetroPCS Communications, Inc. and Its Subsidiaries and by T-Mobile, USA, Inc., and its Subsidiaries, *WT Docket No. 12-301*.

Dear Ms. Dortch:

On behalf of The Greenlining Institute (“Greenlining”), the undersigned hereby submits this reply to the objections to disclosure of confidential and highly confidential information of Deutsche Telekom AG and T-Mobile USA filed with the Commission on January 7, 2013.<sup>1</sup> Deutsche Telekom AG and T-Mobile USA (“T-Mobile”) argue that Greenlining is not a “Participant” under the First and Second Protective Orders because Greenlining does not have a good faith intention to file material comments in this proceeding.<sup>2</sup> However, T-Mobile is fully aware that Greenlining intends to file comments in this proceeding. Additionally, Greenlining has not yet filed comments in this proceeding because of material representations by T-Mobile. It now appears that T-Mobile made those representations in an attempt to prevent Greenlining from participating in this proceeding and to exclude discussion of the proposed transaction’s effect on communities of color and low-income communities.

<sup>1</sup> Letter from Nancy J. Victory, Wiley Rein LLP, to Marlene Dortch (January 7, 2013) (*hereafter*, T-Mobile Letter).

<sup>2</sup> *Id.* at p. 2

**Greenlining Coalition:**

Allen Temple Baptist Church  
American GI Forum  
AnewAmerica  
Asian Business Assn  
Asian Inc  
Black Business Assn.  
Brightline Defense Project  
California Black Chamber  
California Hispanic Chambers  
California Journal for FilAm

California Rural Legal Assistance  
Chicana/Latina Foundation  
Chicano Federation, San Diego  
Community Child Care Council  
Community Resource Project  
Council of Asian American Business Assn.  
El Concilio of San Mateo County  
Ella Baker Center  
FAME Renaissance  
Greater Phoenix Area Urban League

Hispanic American Growers Assn.  
Hmong American Political Assn.  
KHEIR Center  
La Maestra Family Clinic  
Mexican American Grocers Assn.  
Mexican American Political Assn.  
Mission Language & Vocational School  
Mission Housing Development Corporation  
National Federation of Filipino American Assn.  
Oakland Citizens Committee for Urban Renewal

Our Weekly  
Precinct Reporter Group  
Sacramento Observer  
San Francisco African American Chamber  
San Francisco Housing Development  
Search to Involve Pilipino-Americans  
Southeast Asian Community Center  
TELACU  
Ward Economic Development  
West Angeles Community Development

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## **1. Greenlining has Postponed Filing at the FCC at T-Mobile's Request.**

Shortly after the transaction's announcement, Greenlining and T-Mobile engaged in a series of conversations regarding the purported benefits of the proposed transaction. At those meetings, T-Mobile repeatedly stated that it wanted to be completely open about the transaction, and that Greenlining would have access to T-Mobile's confidential materials. Greenlining stated that it tentatively supported the transaction, and if T-Mobile addressed the issues raised by Greenlining, Greenlining would file comments in support of the transaction with both this Commission and the California Public Utilities Commission (CPUC). T-Mobile asked Greenlining not to file any documents with the CPUC, because Greenlining's raising any concerns about the transaction could delay consummation of the transaction to the financial detriment of T-Mobile and MetroPCS.

Based on its initial review of the limited information regarding the transaction, Greenlining was optimistic that the transaction would be in the public interest. Accordingly, Greenlining agreed not to file a protest at the CPUC. Additionally, Greenlining agreed to postpone filing comments with the FCC until the record was more fully developed.<sup>3</sup>

Under the circumstances described above, it appears that T-Mobile falsely represented that if Greenlining did not make an initial filing with the Commission, T-Mobile would not object to the Greenlining's receipt of T-Mobile's Confidential and Highly Confidential documents. T-Mobile now claims that because Greenlining relied on T-Mobile's material false statements, Greenlining should be denied access to those documents. As discussed above, Greenlining has a good faith intention to file comments in this proceeding, and therefore is properly a participant under the terms of the First and Second Protective Orders. T-Mobile is fully aware of Greenlining's intention. Greenlining is also exploring the possibility of submitting a late-filed Petition to Deny on the grounds that T-Mobile's material misrepresentations constitute good cause for the delay. Regardless of the Commission's ruling on any of those issues, the Commission should be aware that T-Mobile appears to have abused the Commission's process in order to avoid a robust discussion of the merits of the Transaction.

## **2. T-Mobile's Behavior Raises the Suspicion that the Confidential and Highly Confidential Documents Contain Information that Contradicts T-Mobile's Public Statements.**

Since T-Mobile filed its objection, Greenlining has engaged in a good-faith attempt to resolve the dispute privately. T-Mobile claims that it is willing to resolve the dispute privately. However, this claim is contradicted by T-Mobile's actions. T-Mobile's only responses to Greenlining's outreach have been delays and empty promises. Every time that it appears that

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<sup>3</sup> T-Mobile disputes the existence of such an agreement. Regardless, based on T-Mobile's apparent openness and willingness to provide confidential documents, Greenlining made the tactical decision to delay filing at the FCC until after a review of the confidential and highly confidential documents.

Greenlining and T-Mobile have reached a solution, T-Mobile finds another problem. Most frustratingly, when T-Mobile and Greenlining do reach an agreement, T-Mobile does not comply with the terms of that agreement, presumably to further delay the proceedings.

For example, on January 14 representatives of Greenlining and T-Mobile held a telephone conference to discuss the dispute. During the discussion, T-Mobile suggested producing the document under the terms of a preexisting non-disclosure agreement (the “California NDA”). Under the terms of the California NDA, Greenlining may only review T-Mobile’s confidential documents for the limited purpose of communicating with T-Mobile, MetroPCS, and the California Public Utilities Commission regarding the proposed merger. Greenlining stated, as it had many times in the past, that receiving the documents under the terms of the California NDA was unacceptable, because it would preclude Greenlining from discussing the contents of those documents with this Commission.

At the conclusion of that telephone conference, Greenlining and T-Mobile agreed that, as a preliminary step, T-Mobile would provide Greenlining with an unredacted copy of the narrative provided to the Commission. T-Mobile’s production of that document would be subject to an as-yet-unsigned non-disclosure agreement (the “new NDA”) which would allow Greenlining to review the document for the limited purpose of communicating with T-Mobile, MetroPCS, and this Commission regarding the proposed merger. Despite this agreement, T-Mobile produced an unredacted copy of the narrative on January 14, before entering into the new NDA. Rather, T-Mobile produced the narrative “subject to the NonDisclosure Agreement executed by Greenling [*sic*] and T-Mobile/MetroPCS here in California.”<sup>4</sup>

T-Mobile is fully aware that Greenlining finds receipt of the narrative solely under the terms of the California NDA unacceptable. Despite this knowledge, T-Mobile provided the narrative subject solely to the terms of the California NDA. It is puzzling that T-Mobile claims that its confidential and highly confidential documents show that the proposed transaction is in the public interest, yet consistently opposes access to those documents. Given T-Mobile’s consistent opposition to supply any of the documents supporting the narrative, Greenlining can only assume that the confidential and highly confidential documents contain information which contradicts T-Mobile’s public statements regarding the merger. This would not be the first time that T-Mobile was a party in a transaction where confidential and highly confidential information contradicted public statements about the transaction.<sup>5</sup>

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<sup>4</sup> Email from Leon Bloomfield, Outside Counsel for T-Mobile to Paul Goodman, Legal Counsel for Greenlining (January 14, 2013).

<sup>5</sup> See Staff Analysis and Findings, *In the Matter of Application of AT&T, Inc. and Deutsche Telekom AG to Transfer Control of Licenses and Authorizations Held by T-Mobile USA, INC. and Its Subsidiaries to AT&T Inc.*, DA 11-799, WT Docket No. 11-65, available at [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/DA-11-1955A2.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/DA-11-1955A2.pdf).

### **3. T-Mobile is Attempting to Preclude a Discussion of the Proposed Transaction's Effects on Its Customers.**

When T-Mobile and Greenlining first began discussing a private solution to the dispute, T-Mobile stated that it was concerned that if Greenlining filed comments with the Commission questioning the public interest benefits of the proposed transaction, other public interest groups might demand access to T-Mobile's confidential information and file comments themselves. T-Mobile felt that this scenario could delay the Commission's ruling. As Greenlining and T-Mobile continued their conversation, T-Mobile indicated that it did not want Greenlining to file any comments with the Commission, even comments in support of the transaction. T-Mobile stated that any comments by Greenlining raised the concern that other public interest groups might take note of the proceedings and delay the process.

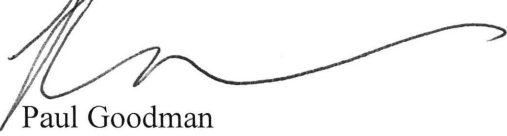
Based on T-Mobile's initial representations, Greenlining chose to put off filing comments with the Commission despite the possibility that the Commission might reject a future filing as untimely. T-Mobile now seeks to preclude Greenlining's review of confidential and highly confidential documents based on purported concerns over a delay caused by the possibility of other public interest groups' seeking to participate in the proceeding. Greenlining submits that T-Mobile is less concerned with a delay in the proceedings than it is concerned that public interest groups will participate in the proceeding. Given the progression of its discussions with T-Mobile, Greenlining can only conclude that T-Mobile is fearful of public interest groups' participation in this proceeding, and, accordingly, a meaningful discussion of the proposed transaction's effects.

Greenlining advocates on behalf of low-income communities and communities of color. T-Mobile states that the new company will continue T-Mobile and MetroPCS' business strategies of providing wireless services to those same communities. Apparently, T-Mobile is happy to profit off of low-income communities and communities of color, but vigorously opposes those communities' participation in a discussion of the proposed transaction's merits.

Wherever possible, Greenlining pursues collaborative solutions to issues before pursuing adversarial remedies. As part of pursuing a collaborative solution to the issues presented by this transaction, Greenlining agreed to delay filing its comments so that T-Mobile would have an opportunity to respond to Greenlining's concerns. Rather than using that delay to demonstrate to Greenlining that the proposed transaction is in the public interest, T-Mobile is attempting to use the delay to preclude a robust discussion of the merits of the proposed transaction. Accordingly, Greenlining respectfully requests that the Commission direct T-Mobile to provide Greenlining with all of the documents subject to the Commission's Protective Order and Second Protective Order no later than January 22, 2013.

If you have any questions, or if I can be of additional assistance, please do not hesitate to contact me.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Paul Goodman', with a long, sweeping horizontal stroke extending to the right.

Paul Goodman  
Legal Counsel  
The Greenlining Institute

Cc (via email): David Hu  
Kathy Harris  
Kate Matraves  
Jim Bird  
David Krech  
Carl Northrup, TELECOMMUNICATIONS LAW PROFESSIONALS PLLC  
Nancy Victory, Wiley Rein LLP

### **Declaration of Paul Goodman**

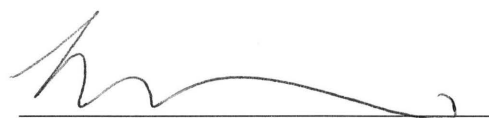
My name is Paul Goodman. I am Legal Counsel of the Greenlining Institute.

The Greenlining Institute is a national policy, organizing and leadership institute working for racial and economic justice. The Greenlining Institute's mission is to empower communities of color and other disadvantaged groups through multi-ethnic economic and leadership development, civil rights, and anti-redlining activities. We also advocate before regulatory agencies to advance these goals.

I am familiar with the contents of the foregoing letter replying to the objection to disclosure of confidential and highly confidential information of Deutsche Telekom AG and T-Mobile USA. The factual assertions made in the letter are true to the best of my knowledge and belief.

I declare that the foregoing is true and correct.

Executed on January 16, 2013.

A handwritten signature in black ink, appearing to read 'Paul Goodman', is written over a horizontal line.

Paul Goodman  
Legal Counsel